

rules made thereunder shall be guilty of an offence. Regulation 4(6) of the Fisheries (Maritime) Regulations, 1967 as amended in 1970 (vide P.U.(A) 56/70) provides clearly that a contravention of any of the conditions of the licence shall be deemed to be an act contrary to the regulations and by virtue of section 13(1) of the Act an offence under the Act. In this case the statutory conditions attached are as in the Fifth Schedule (see regulation 4(4))."

Counsel for the appellants relied on the Federal Court case *Public Prosecutor v. Lee Chin Chai*⁽³⁾ which was a reference on the same section by the Public Prosecutor as a result of case *Public Prosecutor v. Lee Chin Chai & Ors.*⁽⁴⁾ In fact the question raised in that reference before the Federal Court was a narrow one, that is whether a vessel in which fishing appliances are found contrary to regulation 3(b) of the Fisheries (Maritime) Regulations, 1967, is a thing in respect of which an offence has been committed contrary to the provisions of the Act or any regulations or rules made thereunder, and thereby liable to seizure under section 14(1) of the Fisheries Act, 1963 (as amended by Act A152 of 1972) and consequently liable to forfeiture under section 15(1) of the same Act. The answer to that was given in the negative by the Federal Court. Both these cases cannot be applied to the present appeal because in the instant case the offence was for operating trawl nets outside the prescribed area in the licence whereas in *Public Prosecutor v. Lee Chin Chai*, *supra*, the offence was for possession of fishing appliances without a licence.

The case of *Juk De Sa v. Public Prosecutor*⁽⁵⁾ is not also applicable here because there the question of section 407 of the Criminal Procedure Code was not raised. Section 407 of the Criminal Procedure Code is a general provision relating to the order for disposal of property regarding which an offence has been committed and that during or at the conclusion of any inquiry or trial in any criminal court the court may make such order as it thinks fit for the custody or disposal of any property or document whatsoever produced before it regarding which any offence appears to have been committed or which has been used for the commission of any offence. But the words of section 15(1) of the Fisheries Act, 1963 are so clear that an order for forfeiture *shall* be made if it is proved to the satisfaction of the court that the offence committed is either for using any net, instrument, fishing material or appliance which is "prohibited" or the offence is for doing or carrying on an act without a licence or permit required by that Act or any regulations or rules made thereunder provided that the "thing" was the subject-matter of or was used in the commission of the offence. There is no doubt also that the general provision of section 407 of the Criminal Procedure Code is overridden by the specific provision of section 15(1) of the Fisheries Act, 1963 with regard to disposal of property and that to have an inquiry under section 407 of the Criminal Procedure Code would in any case be meaningless for the court must give effect to the express words of section 15(1) of the Fisheries Act, 1963.

For the above reasons the appeal is dismissed.

Appeal dismissed.

Solicitors: Yeap & Co.

JEGATHESAN v. PUBLIC PROSECUTOR

[A.Cr.J. (Chang Min Tat F.J.) November 2, 1978]
[Kota Bharu — Criminal Appeal No. 22 of 1976]

Criminal Law and Procedure — Abetment of giving false evidence — Accomplice evidence — No corroboration.

Evidence — Accomplice Evidence — Need for corroboration.

The appellant had been convicted of the offence of abetting one Ramli in giving false evidence at a criminal trial. The appellant appealed. The principal evidence against the appellant was that of Ramli but the learned President of the Session Court did not consider whether Ramli was an accomplice and whether his evidence was corroborated.

Held: as the learned President had failed to consider whether the witness was an accomplice and as he had not advised himself of the dangers of convicting on the uncorroborated evidence of accomplices, the conviction was unsafe and must be quashed.

Cases referred to:-

- (1) *Jaafar bin Deris v. Public Prosecutor* [1956] M.L.J. 183.
- (2) *Rex v. Lim Yam Hong* 14 S.S.L.R. 152, 156.
- (3) *Tay Choon Nam & Ors. v. R.* [1949] M.L.J. 157.
- (4) *R. v. William Cyril Davies* (1930) 22 Cr. App. R. 33.
- (5) *R. v. Baskerville* [1916] 2 K.B. 658.
- (6) *R. v. Thomas Lewis* (1937) 26 Cr. App. R. 110, 113.

CRIMINAL APPEAL.

Edgar Joseph Jr. (A. Wilson with him) for the appellant.

T.S. Sambanthamurthi (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Chang Min Tat F.J.: The appellant, an advocate and solicitor of the High Court of Malaya, was convicted of the offence of abetting one Mohd. Razali alias Ramli bin Awang (Ramli) in giving false evidence at a criminal trial, an offence punishable under sections 109 and 193 of the Penal Code and he was sentenced to 1 day's imprisonment and a fine of \$2,000. He appeals to the High Court against his conviction.

The facts leading up to the appellant's trial can be shortly stated. Ramli was the victim of an unfortunate shooting case and is perhaps fortunate to be alive. He became a prosecution witness, if not the chief prosecution witness against the persons (Che Muda @ Che Mamat, Yazid bin Che Mamat and Zainal bin Jaafar) charged with voluntarily causing hurt under section 324 Penal Code. The appellant appeared for the accused. In the course of his evidence at this trial, Ramli testified that at the time and place mentioned in the charge of voluntarily causing hurt, he was walking. Then there was an adjournment. Before the resumption, he saw the appellant in the latter's office. The circumstances of this interview will be gone into later. But at the continuation of the trial, the appellant applied to recall Ramli for further cross-examination. On his application being allowed, the appellant succeeded shortly in eliciting from Ramli the information that he was not walking but that he was riding a motor-cycle at the relevant time. The appellant had thus obtained from Ramli a contradiction which appeared to the trial judge so material that he found Ramli, apparently on the strength of this one contradiction, an untruthful wit-

ness and disbelieving him, he acquitted and discharged Che Muda and Zainal.

But arising necessarily from that acquittal, the prosecution put Ramli in the dock on a charge of giving false evidence. The charge, contrary to the prosecution's usual practice, did not accuse Ramli of giving two contradictory statements, one of which he must know to be false but flatly stated that Ramli perjured himself when he said he was riding a motor-cycle. The prosecution took the view that since no other witnesses had referred to any motor-cycle and no motor-cycle was found at or near the scene of the shooting, the latter testimony of Ramli must be false.

At this trial, Ramli who was then defended by another counsel reverted to his earlier evidence as being the truth. He therefore admitted to the perjury as set out in the charge. He testified however that he did not commit the perjury through any intention on his part but he did so only at the request of the appellant. This was of course no defence to the charge. The learned President convicted him but doubtless having regard to the circumstances in which the offence was said by Ramli to have been committed, imposed what must be an extraordinarily light sentence of binding him over for one year.

Arising out of Ramli's defence or mitigation to the charge, the appellant was charged in court on a charge of abetment. The case for the prosecution hinged almost entirely on the evidence of Ramli. Throughout he stuck to his evidence that it was the accused who persuaded him to change his testimony. He further explained that he went to see the appellant in the latter's office on receipt of a letter from him asking him to do so. That letter is now missing. It was apparently sent by hand. Ramli could not now identify the person who passed over the letter to him. It was not Yunus bin Yaacob, but Yunus did also tell him orally that the appellant wanted to see him. According to Ramli, both he and Yunus saw the appellant in his office. The alleged conversation during which the appellant persuaded him to change his testimony with a promise of safety, took place in the presence of Yunus.

This Yunus also played a part in the shooting case or more properly the voluntarily causing hurt case. He was sub-poenaed as a prosecution witness and then on being offered to the defence, appeared as a defence witness. And as a defence witness his evidence was to the effect that Ramli was riding his motor-cycle which he had lent him, and he was not walking. But rather curiously, he also explained that Ramli had told the police in his statement to them that he was walking only at the request of one Haji Yusof bin Hj. Deraman. His evidence contributed nothing to ascertaining whether Ramli was walking or whether he was riding a motor-cycle. It was therefore equally a case of Ramli telling a lie when he said, at the request of Haji Yusof, that he was walking and telling the truth when he changed this evidence or a case of his committing perjury when he said he was riding a motor-cycle. However Haji Yusof was not called as a witness, but Yunus did say that he went along with Ramli to the appellant's office and heard the appellant ask him to change his evidence.

A The prosecution case however did not depend entirely on the evidence of Ramli and Yunus as to the visit of Ramli to the accused's office. It called one Liew Woo Lim, the former clerk of the appellant. This witness testified to Ramli's visit to the appellant's office. He did not say one word about Yunus accompanying Ramli. The probable reason was because he was not asked. It is quite understandable for defence to refuse to offer the prosecution the corroboration of its evidence by cross-examination on a point not raised by the prosecution, but, quite frankly, I am unable to understand why the prosecution failed to adduce evidence from this witness that Yunus was also present. What Liew said was that after Ramli had left, the appellant came out of his office and told him that Ramli wanted to change his evidence. This was of course no admission that he had induced Ramli to change. All it amounted to was that the appellant now knew that Ramli was going to change his evidence and to perjure himself.

D On this evidence from Liew, appellant's counsel did not seek to deny that the appellant saw Ramli in his office. That evidence was amply corroborated by someone who could not have any interest of his own to serve and who was not tainted as an accomplice, but counsel did contend with his usual vigour that Ramli and Yunus were accomplices and that the conviction of the appellant on the abetment charge was obtained by a substantial misdirection as to the evidence of accomplices.

F In his grounds of judgment, the learned president did not consider whether Ramli was an accomplice. All he noted was that Ramli's evidence contained certain discrepancies but he did not find them so material as to affect the witness's credibility or so contradictory that he could not accept him as a truthful witness. He had therefore failed to consider the part played by Ramli and that even if the appellant on the contentions of the prosecution case was suborning and not merely abetting the offence of perjury, Ramli was a "particeps criminis", and, in other words, could have been and was in fact put in the dock on a charge of perjury. How he came to overlook this is quite beyond understanding, as the Deputy Public Prosecutor who prosecuted the case before him frankly conceded that Ramli was an accomplice. The advice of the Deputy Public Prosecutor was in conformity with his duty to disclose to the court that this witness was an accomplice: *Jaafar bin Deris v. Public Prosecutor*.⁽¹⁾ But having been correctly advised by the prosecution, it is all the sadder that the learned President failed or declined to consider and treat Ramli as an accomplice. He however treated Yunus as an accomplice, with respect, correctly.

I It may be wholesome to set out once again what the trial judge has to remind himself when dealing with accomplice evidence. In the words of Woodward Ag. C.J. in *Rex v. Lim Yam Hong*,⁽²⁾ at page 156 and reiterated in *Tay Choon Nam & Ors. v. R.*⁽³⁾:

1. The uncorroborated evidence of an accomplice is admissible and a conviction founded on such evidence is not illegal.
2. But it is a rule of practice amounting to a rule of law that the presiding judge must warn the

- jury of the danger of convicting on such evidence.
3. It is also his duty to tell them that nevertheless they can legally convict on such evidence.
 4. When it appears that the judge has not given the required warning, the Court of Appeal will quash the conviction.
 5. One accomplice cannot corroborate another.
 6. The corroboration must be evidence which implicates the accused. Evidence tending merely to show that a crime has been committed is insufficient.

Where a judge sits alone as a judge of fact as well as a judge of law, he must adequately warn himself of the danger of convicting on the uncorroborated evidence of an accomplice.

"If he ignores or disregards any of these principles, then I think it is the duty of this Court (the High Court in its criminal appellate jurisdiction) to quash the conviction, but if it appears that he has clearly present in his mind the danger of convicting on the unconfirmed evidence of an accomplice but nevertheless believes that evidence and convicts, this court will not interfere with the conviction, merely on the ground of want of corroboration."

per Woodward Ag. C.J. in *Lim Yam Hong*, *supra*, pages 159-160.

In the case under appeal, the learned President had never at any moment warned himself, much less adequately or clearly, that Ramli was an accomplice, for the simple reason that he did not think he was.

The learned Deputy Public Prosecutor who responded to the appeal made, if I may without disrespect call it, a last ditch attempt to salvage the conviction. In *R. v. William Cyril Davies*,⁽⁴⁾ the Court of Appeal refused to disturb a conviction based on the evidence of accomplices, where the judge in his summing up to the jury made no single mention of accomplice or corroboration. The jury acquitted the accused on four counts when the case against the accused depended entirely on the evidence of accomplices, but convicted him on the fifth count, where in addition to the evidence of the accomplices there was the evidence of a police officer who saw the envelope containing the money pass to the accused and who shortly afterwards arrested the accused with the envelope on him. It was suggested that the jury might well have thought that there was sufficient corroboration in the evidence of the detective who said he saw the envelope pass. Hewart L.C.J. said that the question before the court was whether, in the circumstances of the omission of any direction on accomplice evidence, the verdict of guilty on the fifth count amounted to a substantial miscarriage of justice, or, in other words, whether it was clear that the jury would inevitably have arrived at the same conclusion upon that count, if an express direction on the lines laid down in *Baskerville*⁽⁵⁾ had been given. On a review of the evidence, the learned Lord Chief Justice found that "the court is satisfied that however explicit the direction on those lines had been, the jury could not have arrived at any conclusion other than that to which they came" and accordingly dismissed the appeal.

If there had been a fully explicit direction on accomplice evidence and the jury could not have

nevertheless arrived at any other conclusion, the verdict would not be disturbed, even if there had been no such direction. The same Lord Chief Justice in *R. v. Thomas Lewis*⁽⁶⁾ at page 113 expressed the proposition thus:

"This court has held more than once that, although the judge omits to give a proper direction, or any directions nevertheless where corroborative evidence exists in the case and is of such a convincing, cogent and irresistible character that it is apparent that the jury, if they had had a proper direction, must inevitably have come to the same conclusion, the omission is not fatal; otherwise it is."

The question in this case thus becomes whether there is corroborative evidence of a convincing cogent and irresistible character. There is indeed evidence of Ramli's visit to the appellant's office from the testimony of the chief clerk Liew and this evidence could be of such convincing character that an appellate court would act on it. But beyond this, there is no other corroborative evidence in the sense in *Baskerville*, which has been consistently adopted in our courts, of "independent testimony... which implicates him that is, which confirms in some material particular not only the evidence that the crime has been committed, but also that the prisoner committed it..." There is no corroboration of Yunus's accompanying Ramli to the office or the appellant. Ramli and Yunus, being accomplices, cannot corroborate one another. There is no corroboration of what transpired between Ramli and the appellant in the latter's office. In view of the admission that he first testified he was walking, not because it was the truth but at the request of Haji Yusof, the case for the prosecution, in my view, was not such that I would be prepared to uphold the conviction where the trial judge had not advised himself of the dangers of conviction on the uncorroborated evidence of accomplices. The misdirection renders the conviction unsafe.

The conviction is quashed and the sentence set aside.

Order accordingly.

Solicitors: *Wilson & Co.*

**BONG GEOK BENG v.
AHMAD NORDIN BIN MOHAMED AMIN
& ANOR.**

**ROSNAH BINTE KAMARUDIN v.
SAMAD BIN KASSIM & ANOR.**

**LAI KEUN BAN v.
TAN SRI CHONG HON NYEN & ANOR.
MOHAMED BIN BAKAR v.
ABDUL RASHID BIN OTHMAN & ANOR.**

[O.C.J. (Wan Yahya J.) December 28, 1978]

[Melaka — Election Petitions Nos. 1, 12, 13 & 14 of 1978]

Elections — Election Petition — Motion to dismiss petition — Uncontested election — When election takes place — Wrong date given in petition — Insufficiency of security for costs — Number of charges — Failure to specify charges — Election (Conduct of Elections) Regulations, 1959, regs. 7, 10, 12 — Election Offences Act, 1954, ss. 32 and 34.

In this case a number of election petitions had been brought alleging that the returning officer had wrongly rejected the nominations of the petitioners and had declared the return